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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M.A., a Person Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.A. and R.S.,

Defendants and Appellants.

B211075

(Los Angeles County
Super. Ct. No. LK01838)

APPEAL from an order of the Superior Court of Los Angeles County,
Stephen Marpet, Judge. Order is affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant
and Appellant, D.A.; Judy Weissberg-Ortiz, under appointment by the Court of Appeal,
for Defendant and Appellant, R.S.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel, and Timothy M. O’Crowley, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ the mother and the alleged father of the minor child M.A. (Mother, Father and M.A., respectively), appeal from an order that terminated their parental rights. Mother and Father assert the trial court abused its discretion when it refused their attorneys' requests for a continuance of the section 366.26 hearing. The requests were made because Mother and Father were not present when the case was called. Our review of the record convinces us that no abuse of discretion occurred. Therefore, the order terminating parental rights will be affirmed.

BACKGROUND OF THE CASE

1. Dependency Petitions and the Detention, Adjudication and Disposition Hearings

M.A. (a female child born on June 1, 2007), came to the attention of the Los Angeles County Department of Children and Family Services (the Department) in November 2007 when it received a report that Mother had left the minor with the child's female adult sibling two weeks earlier to go to a dental appointment, and Mother failed to return for the child. The adult sibling (hereinafter, the "caregiver") reported that Mother has been in and out of M.A.'s life since the child was born. The caregiver stated Mother uses crack cocaine. A maternal uncle stated Mother has used drugs since the caregiver was a child. The Department determined that Mother has two children who are being raised by their maternal aunt and uncle through the dependency court

¹ Unless otherwise indicated, all references herein to statutes are to the Welfare and Institutions Code.

under permanent placement services. Those children were brought into the system after Mother left them with a relative to go to the store and never returned for them. The caregiver sibling herself was also in the dependency system.

Mother's whereabouts were initially unknown to the Department and it left M.A. in the care of the caregiver and helped the caregiver to transfer DPSS funds into the caregiver's name. In December 2007, when Mother was not able to collect a DPSS check, she contacted the Department and requested that the minor be returned to her.²

In early January 2008, Mother and Father met with a social worker. Then a team decision meeting was held on January 15, 2008. At the meeting, the caregiver reported that Mother goes in and out of residential drug treatment programs. The caregiver stated she had never seen Father before, and Mother had previously identified two or three other men as being M.A.'s father.³ Mother and Father were offered voluntary family maintenance services. Father declined the services, saying he wanted the case to

² During one of her interviews with the social worker Mother was asked why she left M.A. with the caregiver and did not return for the child. Mother responded she did not return for M.A. because she "decided [she] wanted a little break." She stated she never bother to inform the caregiver that she was not going to timely return for the child because she "was pretty sure they would not mind." She added that she is "just not a phone person."

Relatives told the social worker that the minor stayed with them most of the time since she was born, and Mother generally did not call to check on the minor when the relatives were caring for her. A March 2008 Department report states that between the time the child abuse referral was made in November 2007 and the day that report was made, Mother had contact with M.A. only four times.

³ Subsequent to that meeting, other family members also reported that at different times, Mother had given them the names of many men whom she said were M.A.'s father. No father is listed on the minor's birth certificate.

go to court. Then Mother also turned down the services, and she and Father walked out of the meeting.⁴ An investigation by the Department revealed that both Mother and Father have lengthy criminal histories. Mother has two felony convictions for drug offenses and six convictions for prostitution, and Father has a felony drug conviction as well as convictions for grand theft, hit and run property damage, and driving without a license.

A dependency petition was filed on February 1, 2008 and the minor was detained by the court on that day. The court found that Father is the child's alleged father, and a paternity test was ordered for him. Weekly random drug testing and drug counseling were also ordered, as well as parenting classes and individual counseling. The court ordered twice weekly, two-hour monitored visits for Mother and Father with a Department-approved monitored in a Department-approved setting.

A first amended petition was filed on March 13, 2008. It alleges Mother is a current user of cocaine, Father is a frequent user of marijuana, both have a history of substance abuse and drug related criminal activity, and both are incapable of providing regular care for M. A. The amended petition further alleges that two of Mother's

⁴ The social worker found Father to be an aggressive negative and controlling influence on Mother. For example, after Mother was informed that a substance abuse program she was attending was not approved by the Department, she remained in the program because Father was at that program; and Father forced her to change her mind about agreements she made with the Department regarding changing drug programs and visiting M.A. during the week. Also, when the minor's family members did not want to monitor visits between Father and M.A., he would not let Mother visit the minor on her own. He was also argumentative and uncooperative with the Department.

children received permanent placement services through the dependency court due to Mother's substance abuse and abandonment; Father knew of Mother's drug use and failed to take steps to protect M.A.; and these matters endanger the child's physical and emotional health and safety. The first amended complaint also alleges Mother left the minor with the caregiver in October 2007 without making appropriate provisions for the minor's ongoing care and supervision; Father has failed to supervise and protect the minor; and Mother and Father have failed to provide the minor with the necessities of life, including adequate food, shelter, clothing and medical treatment, which endangers the minor's health and safety.

All of the allegations in the amended petition were sustained at an adjudication/disposition hearing in June 2008, and the court declared M.A. a dependent child of the court and placed custody with the Department. Citing section 361.5, subdivision (b), the trial court stated that given Mother's long history of drug use and failures in drug treatment programs, and her failure to reunify with her other children, no reunification services would be offered to her. The court stated that as an alleged father, Father was not entitled to reunification services under section 361.5, subdivision (a). A section 366.26 hearing was set for September 30, 2008. Mother and Father were both ordered back to that hearing without any further notice, order or subpoena. However, the record shows they were both personally served, at the June 2008 hearing, with notice of the September 30, 2008 hearing. The notice indicates that at the September 30, 2008 hearing, the court would consider the social worker's

recommendation that parental rights be terminated and a plan of adoption be implemented.

2. Other Reports and Hearings

Although he asserted throughout this case that he is M.A.'s biological father, Father refused to take the paternity test that the court ordered. Also, for a period of time, he and Mother had no visits with M.A. because he was insisting that visits could only be on the weekends. The Department had no monitors available on the weekends, and a person that Father suggested could be a monitor had not submitted to fingerprinting. Later, he insisted that the visitation site be at a park that is not anywhere near the midpoint location between where the caregiver resides and where he and Mother reside. Further, when visits were arranged, he and Mother regularly arrived an hour early or late, or not at all, and then blamed the caregiver saying she was trying to prevent visitation. At an April 2008 hearing, they blamed their lack of visitation on the caregiver not cooperating. The court ordered the Department to facilitate visitation. By a June hearing, a visitation schedule for extended visits on Sundays had been arranged. The Department's report for the September 30, 2008 section 366.26 hearing states Mother and Father had been visiting M.A. on a weekly basis, usually on Sundays, during the two months prior to that hearing. The caregiver was monitoring the visits and reported they went well. Mother and Father spent their time playing games with M.A. and reading to her, and the minor appeared to enjoy the visits.

Father and Mother completed their parenting classes in April 2008 and were reported to have good participation in the classes. However, their efforts for drug

treatment were not nearly as good. A March 2008 report states Mother and Father were attending a substance abuse program that was not approved by the Department. They were informed it was not an approved program but they declined to attend an approved program. Mother told the social worker she was tired of using drugs because they were not fun any more since they could be laced with chemicals; she did not state she was tired of using drugs because they impeded her ability to care for her children. She stated the last time she used cocaine was in August 2007. However, she had previously told the social worker that she used it on January 4, 2008. Father stated he uses marijuana.

Eventually, Mother enrolled in an approved weekday substance abuse program that had a total of 12 and one-half hours of classes each week. However, her attendance was not consistent as she often left the sessions early, saying she had doctors' appointments or parenting classes. Also, she told the social worker she was available for visits with M.A. during the hours she was supposed to be in the substance abuse program.

At the time of a June 2008 hearing, Mother was drug testing and had two no-shows and four negative tests. Father had finally begun drug testing (in late April 2008) and the Department had received one negative test result for him. He had also commenced attending a treatment program approved by the Department. However, he and Mother were not attending all of their drug treatment sessions. Father stated they had numerous medical appointments, and appointments with the Department, and thus they were prevented from having consistency with their drug treatment.

At the June 2008 hearing, Mother testified as follows. She was in a drug treatment program when M.A. was born and was in that program for six months. At the time of the hearing, she was taking a total of 12 drug tests a month for her current drug treatment program and for the Department, and she was also testing at the religious institution where she lives. Her treatment program is two hours a day, five days a week, and consists of random testing, individual counseling, group therapy and narcotics/alcohol anonymous meetings. She enrolled in the drug treatment program on February 8, 2008, her completion date is August 8, 2008, she had only missed three of these various sessions since then, and she missed them due to medical appointments and welfare appointments. She was also attending narcotics anonymous meetings outside of her treatment program, and the last time she used drugs was in August 2007.⁵

Father's attorney made an offer of proof as to what Father would say if he testified. Father would testify he began seeking help for his drug problem when this case was filed and has been testing clean since then. Any time he missed his drug treatment sessions it was because he had appointments with his probation officer, medical appointments, or was seeing the social worker.

As rebuttal evidence regarding Mother and Father's participation in their treatment program, the court admitted into evidence a report from the Department. The

⁵ . The Department's March 13, 2008 report states the caregiver reported that Mother was high when she came to the caregiver's grandmother's house in November 2007, and as noted above, Mother admitted to the social worker that she had used cocaine on January 4, 2008.

report states that of the 85 days in February through May 2008 in which Mother's drug treatment program was in session, she attended class on only 43 days, and Father's attendance was only slightly better. The report also states Mother told the social worker she had doctor appointments on the days she missed her programs, but the social worker observed that Mother goes with Father on whatever appointments he has.

The reports for the section 366.26 hearing state that the caregiver desired to adopt M.A. The child had been living with her exclusively since January 29, 2006, and had spent significant periods of time with her prior to that. The caregiver and M.A. are well bonded in a warm, affectionate relationship that resembles that of a mother and daughter, M.A. calls the caregiver "mama," the child is well cared for by the caregiver, and she is developing appropriately for her age.

At the section 366.26 hearing, neither Mother nor Father appeared in court.⁶ Mother's attorney stated she "ha[d] no direction from [her] client" asked that the case be put over and set for a contested hearing, or at least put over so counsel could contact Mother. Father's attorney joined in the request for a contest, saying "[i]t seems there is a connection between this child and these parents, and they have been visiting regularly recently. And . . . I believe that there is an argument as to [section 366.26, subdivision] (c) (1) (B) (i) for this father." The Department objected, saying Father is only an alleged father and therefore not entitled to a contest, and even though Mother and Father were having visits with the child, their relationship with her did not rise to

⁶ Mother and Father appeared at all of the hearings in this case except the September 30, 2008 section 366.26 hearing.

the level of any of the exceptions to termination of parental rights that are set out in section 366.26, subdivision (c).

The court declined to put the matter over, saying that at the previous hearing Mother and Father were both ordered back to court for the section 366.26 hearing. The court further noted that their relationship with M.A. did not rise to a level that would raise an issue of a parental relationship exception to termination of parental rights, and thus there was no evidence that would warrant a contested hearing on the issue of termination of parental rights. The court found it was likely the minor would be adopted, and terminated the parental rights of Mother and Father. Mother and Father filed notices of appeal on the same day their parental rights were terminated.

DISCUSSION

Mother and Father assert the denial of their attorneys' requests for a continuance was an abuse of the trial court's discretion. They assert it requires reversal of the order terminating their parental rights.

Section 352 addresses the issue of continuances at dependency hearings. It provides that except when it is contrary to the interests of the minor, the dependency court may continue a hearing beyond the time limit within which it is required to be held. Section 352 also states that the best interests of the child require the court to give substantial weight to the child's need for a prompt resolution of custody status, a stable environment, and the avoidance of damage from prolonged temporary placements. Further, section 352 provides that a continuance must be based on evidence that

demonstrates there is good cause for granting the continuance, and the convenience of the parties is not good cause.

Thus, section 352 discourages continuances, and an order that denies a continuance is reversed only upon a showing that the trial court abused its discretion when it denied the continuance. (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.) Abuse of discretion is demonstrated when the trial court exceeds the bounds of reason and makes a determination that is arbitrary, capricious or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

In this case, we find no abuse of discretion in the denial of the requests for a continuance at the section 366.26 hearing. To begin with, if a continuance is granted, section 352 requires that “the facts proven which require the continuance shall be entered upon the minutes of the court.” Here, had the court granted a continuance, what facts would it have entered in the minutes to support the continuance? There is no evidence that Mother or Father called their attorney or the court to explain why they were not at the hearing. The record only shows that Mother and Father did not appear. There is no indication why.

Moreover, there was no abuse of discretion because there is no indication that a different result would have occurred had a continuance been granted. (*In re Gerald J.*, *supra*, 1 Cal.App.4th at p. 1187; *In re J. I.* (2003) 108 Cal.App.4th 903, 912.) The record makes clear that none of the section 366.26, subdivision (c) exceptions to termination of parental rights could apply in this case, and given the caretaker’s continued stated desire to adopt M.A., there was no argument to be made that the child is not adoptable.

Because adoption is the preferred permanent plan for minors who cannot be reunified with their parents (§ 366.26, subd. (b)), termination of parental rights naturally followed.

We reject Mother's contention that she was served with contradictory notices of September 30, 2008 hearings and therefore a continuance was necessary. The notice for the September 30, 2008 section 366.26 hearing informed her that the court would consider the social worker's recommendations that her parental rights be terminated and a plan of adoption for M.A. be adopted. A subsequently served notice of the RPP hearing (review of the permanent plan for adoption), which was scheduled for the same day as the 366.26 hearing, stated that the social worker recommended "no change in orders, services, placement, custody, or status." The notices are not per se contradictory. The second advisement can be read to mean that the order for a section 366.26 hearing remained unchanged, as did the placement of the minor child with the caregiver and her status as a prospective adoptive child. If Mother was confused, a call to her attorney or the social worker could have been made. Moreover, this "confusion" argument was not addressed to the court by Mother's attorney, and the court was not required to guess why Mother was not at the hearing. Mother's argument that she was given contradictory advisements is not bolstered by her observation that the record does not indicate whether the Department's reports for the two September 30, 2008 hearings were provided to her.

Nor do we find relevant the fact that when the trial court denied the request for a continuance it misspoke and stated that Mother and Father had been warned, at the

prior hearing, of the seriousness of the section 366.26 hearing. Mother is correct when she argues that the reporter's transcript shows that no such advisement was made, and she is correct that the trial court did not indicate to her and Father, at the prior hearing, that an issue at the section 366.26 hearing would be whether parental rights would be terminated. However, Mother does not cite authority that such advisements are a jurisdictional requirement. And again, Mother was provided with an attorney and a social worker who could answer any questions she had. Moreover, she is by no means a newcomer to dependency court proceedings.

DISPOSITION

The order terminating parental rights is affirmed.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.